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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,963	09/19/2000	Kevin W. Anderson	M 6560 OS/OAPT	5388

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EXAMINER
SRIVASTAVA, KAILASH C

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ART UNIT PAPER NUMBER
1651 14

DATE MAILED: 12/31/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/663,963	WENZEL ET AL.	
	Examiner	Art Unit	
	DR. Kailash C. Srivastava	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 October 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.

 4a) Of the above claim(s) 4,5,8,9 and 13-28 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3,6,7 and 10-12 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

 a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. _____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

 * See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

1. Applicants' amendment filed 10/16/2001 (paper Number 13) is acknowledged and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-28 are pending.
3. Claims 4-5, 8-9 and 13-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected claims, there being no allowable generic or linking claim.
4. Claims 1-3, 6-7 and 10-12 are currently pending and are examined on the merits.

Claim Rejections Under 35 U.S.C. § 102

5. Claims 1-3, 6-7 and 10-12 are rejected under 35 U.S.C. §102(b) as anticipated by Shirai et al (U.S. patent 5,618,708) for the reasons of record set forth at pages 3-4 of the Office action of July 17, 2001 (Paper # 12).

In response to this rejection, applicants argue that Shirai et al., do not anticipate the cited claims since the culture medium composition that they have disclosed are "merely optional".

Applicants' arguments regarding the prior art references have been fully considered but are not persuasive. Claims 1-3, 6-7 and 10-12 are still anticipated by Shirai et al., for the reasons stated below.

Shirai et al., disclose a culture medium comprising glucose, ammonium sulfate, potassium phosphate, calcium chloride, sodium chloride, copper, iron, zinc and biotin (See, Column 7, Table 3). The biotin component in Shirai et al's disclosure is in a culture broth, i.e., it is dissolved in the culture medium, and it is common knowledge in the microbiological art that a culture medium is sterilized prior to inoculating it with a particular organism.

Thus, all the nutritional components (including biotin) of culture medium are in non-particulate form and free of bacterial or microbial cells until the culture medium is inoculated with a given microorganism (bacterium). Furthermore, Shirai et al., have disclosed a chelating agent and antifoam as components of their culture composition (Column 6, Lines 1 and 31), even though their statement might seem that these components are optional in their culture medium. For e.g., these components may not be required under certain circumstances (e.g., antifoam will not be required when the cells are cultivated on a solid medium containing agar, See, Column 7,Table 2).

Thus, Shirai et al., disclose a culture medium comprising an organic carbon/energy source (glucose), an inorganic nitrogen source (ammonium sulfate), a source of phosphate (potassium phosphate), a metal (calcium chloride), trace metals (e.g., zinc), a chelant (citric acid), antifoam, and particulate and bacteria free biotin.

Thus, the cited reference anticipates Claims 1-3, 6-7 and 10-12.

6. No claims are allowed.

7. **THIS ACTION IS FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRES LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (703) 605-1196. The examiner can normally be reached on Monday to Thursday from 8:30A.M. to 6:30 P.M. (Eastern Standard or Daylight Saving Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Kailash C. Srivastava, Ph.D.
Patent Examiner
Art Unit 1651
(703) 605-1196

KCS
December 18, 2001



FRANCISCO PRATS
PRIMARY EXAMINER